

III. REMARKS

1. In response to the restriction requirement, claims 24-31 are withdrawn, with traverse.

Claims 24-31 depend from claim 17, which for the reasons indicated herein should be allowable. Claims 24-31 merely add further limitations to claim 17, and should be allowable at least in view of their respective dependencies.

2. Claims 1 and 2 are not anticipated by Goldberg et al. ("Goldberg") under 35 U.S.C. §102(b).

Claim 1 recites a method for expressing an "affective state of the caller and/or called party." The musical composition heard by the recipient of the message represents the "affective state" of the sender of the message. No such disclosure is made by Goldberg.

Goldberg relates to inserting background sounds in a telephone call. (Abstract, lines 1-2). The calling party has to select the background sound that is inserted onto the telephone channel. (Abstract, lines 8-14). This is not Applicant's invention.

In the present application, claim 1 recites a method and claim 17 a system in which the affective state of the caller and/or called party is expressed to the conversation partner in a telephone conversation by a musical composition representing the affective state of the sender of the message. The recipient of the message hears the composition in the background of the conversation. The basic idea of the invention is that the musical composition reflects the state of mind (happiness, sadness, etc.) of the sender of a message (page 2, lines 9-12). Thus, the musical compositions are chosen particularly to express a certain state

of mind or feeling of the caller/ called party. When the recipient of the message hears the musical composition, he/she understands the state of mind of the conversation partner and is able to better interpret the things said by the partner (page 2, lines 16-17). The aim of the invention is thus to help the conversation partners to understand each other better and to reduce the risk of misunderstandings and unintentional insults (page 2, lines 21-23).

Since Goldberg does not disclose or suggest that the musical composition represents the affective state of the sender, claims 1 and 2 cannot be anticipated.

Goldberg discloses a method for inserting background sound in a telephone call. The background sounds are not pure musical compositions, but they can include restaurant sounds, forest sounds, beach sounds, city traffic sounds, etc. (Col. 2, lines 48-50). The only purpose of the background sound is to create to the called party an impression of the location of calling party (Col. 1, lines 21-28). Thus, the purpose of the background sound is not to express the affective state of the caller and/or called party and the sounds are not chosen accordingly, like in the present invention. In fact, Goldberg does not give any indication, that background sounds could reflect the state of mind of the conversation partners or that expressing the affective state of the caller/called party could make the conversation situation easier for the conversation partners.

3. Claims 3-19 and 22 are not unpatentable over Goldberg in view of Cardina et al. ("Cardina") under 35 U.S.C. §103(a).

Claims 3-19 and 22 should be allowable at least in view of their respective dependencies.

Furthermore, the combination of Goldberg and Cardina does not disclose or suggest "a musical composition representing the affective state of the sender of the message" as recited in the claims.

4. Claims 20 and 21 are not unpatentable over Goldberg in view of Cardina and further in view of Armanto et al. ("Armanto") under 35 U.S.C. §103(a).

Claims 20 and 21 should be allowable at least by reason of their respective dependencies.

Furthermore, the combination of Goldberg, Cardina and Armanto does not disclose or suggest "a musical composition representing the affective state of the sender of the message" as recited in the claims.

5. Claim 23 is not unpatentable over Goldberg, Cardina and Makelaet et al. ("Makelaet") under 35 U.S.C. §103(a).

Claim 23 should be allowable at least by reason of its dependency. Furthermore, Makelaet is not prior art against Applicant's invention for purposes of 35 U.S.C. §103(a), by reason of 35 U.S.C. §103(c). Both Makelaet and Applicant's invention are owned by, or were subject to an obligation of assignment at the time of the invention, the assignee of the instant application, Nokia Mobile Phones, Ltd.

Thus, under 35 U.S.C. §103(c), Makelaet is not properly prior art for purposes of 35 U.S.C. §103(a). Thus, claim 23 should be allowed.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,



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8 October 2004

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